

THE INDUSTRY-WIDE COAL MINeworkERS' PENSION SCHEME (THE "SCHEME")**1. RECITALS**

- 1.1 The Co-ordinator wishes to amend the Trust Deed and Rules so that where an Employer ceases to be an Employer in accordance with clause 41 of the Trust Deed, a further option is introduced allowing the exiting Employer to be replaced with a new Employer so that the relevant part of the Scheme may be continued with contributions being paid by the replacement Employer, rather than be continued as a closed fund with no further contributions or be wound-up.
- 1.2 Clause 38(1) of the Trust Deed provides that the Co-ordinator may after prior consultation with the Committee of Management amend the Trust Deed and Rules and with the consent of the Committee of Management where this is required under Clause 38(2). Clause 38(2) provides, amongst other things, that no amendment shall be made to clause 41 of the Trust Deed unless it has been approved by all members for the time being of the Committee of Management.
- 1.3 The Committee of Management is satisfied that the proposed changes do not constitute Regulated Modifications as defined in s.67 of the Pensions Act 1995.
- 1.4 The proposed changes introduce a new option where the termination of a part of the Scheme could be triggered under Clause 41 of the Trust Deed. Where the Committee of Management decides not to segregate all or part of the Employer's Fund by deciding to exclude some or all of the benefits from the terminated scheme (in accordance with the last paragraph of Clause 41(8)), a new option of replacing the Terminating Employer with a new entity and continuing to run the Employer's Fund (or Associated Employer's Fund) will be available to the Committee of Management. This will be an alternative to segregating (if relevant) and winding-up the terminated scheme in accordance with clause 41(8), an event which would otherwise be an event triggering a debt under s.75 Pensions Act 1995 (in some if not all cases), or segregating (if relevant) the part of the Scheme applicable to the Terminating Employer and continuing to run it as a closed fund with no further contributions instead of it becoming a terminated scheme in accordance with clause 41(12). It is acknowledged that the "moral hazard" provisions of the Pensions Act 2004 may be a relevant consideration for the Employer companies involved, each time the exercise of this new rule is under consideration.

2. RESOLUTIONS

With effect on and from the date of this Resolution the following amendments to the Trust Deed and Rules are made:

- 2.1 The words "paragraph (13)" shall be deleted from the final sentence of Clause 41(1) and shall be replaced with the words "paragraph (14)".
- 2.2 The words "paragraph (13)" shall be deleted from clause 41(8) and shall be replaced with the words "paragraph (14)".
- 2.3 The current paragraph (13) shall be renumbered as paragraph (14) and a new clause (13) shall be inserted in Clause 41 of the Trust Deed as follows:
- "(13)(a) If the Committee of Management decides (in accordance with the last paragraph of Clause 41(8)) to exclude from the part of the Scheme which becomes a terminated scheme in accordance with Clause 41(7) any of the benefits referred to in Clause 41(9), the Committee of Management may

decide to retain the aforementioned excluded benefits within the Employer's Fund (or Associated Employer's Fund, if relevant) and in addition to replace the Terminating Employer with another person, body of persons or corporate body to act as Employer (the "**Replacement Employer**"), provided that the Committee of Management is satisfied that the following conditions are met;

- (i) the Replacement Employer is, in the opinion of the Committee of Management, a person, body of persons or corporate entity of sufficient financial standing;
 - (ii) the Replacement Employer shall enter into a deed the form of which is satisfactory to the Co-ordinator and the Trustee by which it covenants with the Co-ordinator and the Trustee to comply with and observe the provisions of the Scheme so far as they are applicable to it as an Employer;
 - (iii) the participation of the Replacement Employer will not prejudice registration under the Finance Act 2004; and
 - (iv) any other conditions deemed appropriate by the Committee of Management are met.
- (b) the Replacement Employer shall be treated as an "Employer" under this Trust Deed and Rules in respect of all Members for whom the Terminating Employer was the Employer immediately before it ceased to be an Employer, notwithstanding the fact that Members may not have been employed and may not ever be employed by the Replacement Employer.
- (c) Employees of Replacement Employers (subject to the exceptions mentioned in this sub-paragraph below) who become employed by the Replacement Employer after the Replacement Employer began to participate in the Scheme shall not be eligible for membership of the Scheme.

The following categories of new employees shall be excluded from this requirement:

- (i) new employees who immediately before entering the employment of the Replacement Employer were employed by another Employer, who were Protected Employees by reference to the Scheme while in the employment of that other Employer and who have not ceased to be Protected Employees; and
 - (ii) new employees (not within (i) above) who at any time before entering the employment of the Employer were members of BCSSS or the Mineworkers' Scheme or IWS-MPS or members of the Scheme but only if the Replacement Employer has requested that they be eligible for membership of the Scheme and if the Committee of Management has approved that request."
- (d) In the case of an Associated Employer's Fund, the Replacement Employer will be deemed to be an Associated Employer in that Associated Employer's Fund notwithstanding the fact that the Replacement Employer may not otherwise satisfy the definition of Associated Employer in Clause 43.

3. The definition of Seceding Members contained in Clause 41(14) (as renumbered by this amending resolution, previously called Clause 41(13)) shall be deleted and replaced with the following:

"Seceding Members" means:

- (i) those employees of the Terminating Employer on the Partial Termination Date who do not become employees of another Employer and do not continue as contributing members of the Scheme;
- (ii) those former employees of the Terminating Employer who have not become employees of another Employer and have not continued as contributing members of the Scheme; and
- (iii) any other employees or former employees of the Terminating Employer who the Committee of Management determines shall be included within this definition of Seceding Members."

4. The words "(unless otherwise specified in this Trust Deed and Rules)" shall be inserted after the words "participating in the Scheme" in the definition of "Employer" in clause 43 of the Trust Deed.

It is HEREBY RESOLVED that the above amendments proposed by the Co-ordinator of the Trust Deed are HEREBY APPROVED by all the members of the Committee of Management of Management in accordance with Clause 38(2) of the Trust Deed.

.....  26.10.09

On behalf of the Committee of Management of Management Date

It is HEREBY RESOLVED by the Co-ordinator to amend the Scheme in the manner set out above.

.....  05/11/2009

On behalf of the Co-ordinator Date